

WAIVER OF SERVICE OF SUMMONS

TO: Scott W. Carlson, Heins Mills & Olson, P.L.C., 310 Clifton Avenue, Minneapolis, MN 55403

I, Eric N. Macey, Attorney for The Kohler Company, acknowledge receipt of your request that I waive service of a summons in the action, Phillips v. Sears, Roebuck & Co., et al., No. C 08-02671 SBA, filed in the United States District Court for the Northern District of California. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that The Kohler Company, on whose behalf I am acting, be served with judicial process in the manner provided by Rule 4.

The Kohler Company will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against The Kohler Company if an answer or motion under Rule 12 is not served upon you within 60 days after June 11, 2008.

Dated: June 23, 2008

By: Eric N. Macey
Eric N. Macey
NOVACK AND MACEY LLP
100 North Riverside Plaza
Chicago, IL 60606-1501

On behalf of:
The Kohler Company

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs' attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 (OAKLAND DIVISION)**

Carl Phillips, individually, and on behalf of all
 others similarly situated,

Plaintiffs,

v.

Sears, Roebuck and Company, Deere &
 Company, Tecumseh Products Company, Briggs
 & Stratton Corporation, Kawasaki Motors Corp.
 USA., MTD Products Inc, The Toro Company,
 American Honda Motor Company, Inc.,
 Electrolux Home Products, Inc., The Kohler
 Company, Husqvarna Outdoor Products, Inc.
 and Platinum Equity, LLC

Defendants.

Case No.: 4:08-cv-02671-SBA

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2008, I caused the forgoing document to be served via U.S. Mail to the following:

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17 Dated: July 28, 2008

s/ Vincent J. Esades